IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY APPLICATION No. 310 of 1999
With
COMPANY APPLICATION No. 275 of 2000

For Approval and Signature:

HONOURABLE MR.JUSTICE K.A.PUJ

==========

1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

==========

M/s. KAMAL FOOD TRADING CORPORATION - Applicant(s)
Versus
O.L.OF MECCAS FOOD PVT. LTD. - Respondent(s)

==========

Appearance :
MR MK VAKHARIA for Petitioner No(s).: 1.
MR RM DESAI for Respondent No(s).: 1.
MR AK CLERK for Respondent No(s).: 2.

==========

CORAM : HONOURABLE MR.JUSTICE K.A.PUJ

Date : 16/08/2005

COMMON ORAL JUDGMENT

1. Company Application No. 310 of 1999 is filed by M/s. Kamal Food Trading praying for declaration that the applicant is the owner of the property situated at 207/208/2, GIDC, Naroda, Ahmedabad. The applicant has also prayed for stay restraining the respondent i.e. Official Liquidator from selling and/or disposing off the property belonging to the applicant situated at 207/208/2, GIDC, Naroda, Ahmedabad. The applicant has further prayed for stay restraining the respondent from opening the offers on 19.08.1999 in pursuance of the advertisement issued by the respondent dated 07.08.1999.

2. This Court has issued notice on 22.09.1999 and granted interim relief in terms of para (b) of the Judge's Summons whereby the Official Liquidator was restrained from selling and/or disposing off the property belonging to the

applicant situated at 207/208/2, GIDC, Naroda, Ahmedabad. The said interim relief continued till 21.01.2000. However, there was no further extension of the interim relief.

3. During the pendency of Company Application No. 310 of 1999, M/s. Arbuda Chemicals has filed Company Application No. 275 of 2000 praying for direction to the Official Liquidator to sell the land and building owned by the Company, namely, M/s. Meccas General Food Private Limited (In Liqn.) situated at Naroda GIDC, Industrial Estate for an amount of Rs. 9 Lacs. The applicant has also prayed for the direction to allow the applicant to utilise the land and building of the Company in liquidation on rental basis, in the event, this Court may not think it fit to sell the land of the Company in liquidation to the applicant Company, if any objection being raised by the Secured Creditors of the Company in liquidation.

4. This Court has passed an order on 05.07.2000 recording the submission of the Official Liquidator appearing on behalf of the Company in liquidation that there was a prohibitory order granted by this Court while dealing with Company Application No. 310 of 1999 and to the impression of the Official Liquidator, the said prohibitory order was still operative on that day. The Court has, therefore, directed the Registry to keep this Company Application along with Company Application No. 310 of 1999.

5. In the above view of the matter, both these Company Applications are placed together and they are being heard and disposed of by this common order.

6. As far as Company Application No. 310 of 1999 is concerned, one Mr. Pritam K. Sadhwani has filed affidavit in support of the Judge's Summons. Mr. Mehul K. Vakharia, the learned advocate appearing for the applicant has stated that the

Official Liquidator of M/s. Meccas Food Private Limited (In Liqn.) has issued a public notice in daily newspaper, namely, Gujarat Samachar dated 07.08.1999 inviting offers for sale of the entire assets including lands, sheds, rooms, etc. of the said Company situated at 207/208/2, GIDC, Naroda, Ahmedabad. As per the said advertisement, the offers were to be submitted in sealed cover on or before 18.08.1999 which were to be opened in the presence of the Members of the Sale Committee on 19.08.1999. The applicant has raised the objection against the said advertisement and sent a notice dated 13.08.1999 by Speed Post to the Official Liquidator pointing out that on the date of filing of the Company Petition No. 842 of 1986, the Company ceased to be the owner and in possession of the properties in question. The applicant has entered into an Agreement for Sale dated 01.07.1981 with the Company. The applicant was a purchasing Agent of the Company and in that capacity, a huge amount was due and

payable by the Company to the applicant. The applicant was insisting and pressing for payment of the amount which was due to it, but the Company was not in a position to pay the said amount immediately. The Company had, therefore, executed an Agreement dated 01.07.1981 in favour of the applicant whereby the Company had admitted that the amount in excess of Rs. 7 Lacs was payable by the Company to the applicant towards the principal amount and commission payable to the applicant. The Company by the said Agreement, agreed to sell the said property i.e. Block No. 207/208/2 of GIDC B-1 Type, Shed No. 4 along with all the constructions over the aforesaid lands and the machineries as per the list attached to the Agreement to the applicant for a consideration of Rs. 7 Lacs. It is further stated that at the time of execution of the Agreement, the applicant had paid Rs. 5,000/- by way of payment towards consideration. As per the said Agreement, the Company was under an obligation to give clear and marketable right

titles along with the Certificate of the Govt. Solicitor. As per the Agreement, the Company was required to pay certain amount to GIDC towards the loan and development charges and the Company was required to pay the said amount to GIDC for the purpose of implementation of the said Agreement for sale. The time limit for the Agreement for sale was 31.07.1983.

7. Mr. Vakharia has further stated that as per the Agreement for sale, the Company had agreed to clear all the amounts due to GIDC on or before 01.07.1983 and to make right titles clear and marketable regarding the said property agreed to be sold by Agreement dated 01.07.1981. In case of failure on the part of the Company to do so, it was agreed that the Company would hand over the said property to the applicant on rental basis for which the applicant was required to pay Rs. 1,000/- per month by way of rent.

8. Mr. Vakharia has further stated that the Company

has failed to make the payment of dues to GIDC on or before 01.07.1983. Hence, the Company was under an obligation to hand over the possession of the said property to the applicant. At the time of handing over the possession of the property to the applicant, the Company had passed a receipt 01.01.1983 in favour of the applicant stating that the amount of Rs.7,81,918.46 was the amount of total credit due and payable by the Company to the applicant and out of that due and total amount, Rs.7 Lacs was adjusted towards the amount of full and final consideration towards the sale of the assets i.e. movable and immovable properties of the Company. In the receipt, the Company had agreed to pay the remaining amount i.e. Rs.81,918.46 with 18% interest. The amount of Rs.5,000/- which was paid by way of consideration at the time of execution of the Agreement for sale dated 01.01.1981 is also included in the amount of Rs.7,81,918.46. It is, therefore, stated that the applicant became

the owner of the said property and it has also paid the rent of Rs.1,000/- to the Company for a period of about 10 months. The Auditor of the Company has also pointed out in the Audit Note dated 07.09.1983 to the above effect.

9. Mr. Vakharia has further stated that there is an agreement for sale dated 01.01.1981 in favour of the predecessor in title of the applicant and the entire amount of consideration payable under the Agreement for sale was already paid and the possession of the property was given to the predecessor in title of the applicant. Since the Predecessor and title of the applicant had paid the entire consideration payable under the Agreement for sale and the possession has been handed over to the predecessor in title of the applicant, the applicant is absolute owner of the property in question. Even in any case, the applicant has a lien over the said property as per the provisions of the Transfer of Properties Act. The applicant is also a tenant of the

property in view of the fact that the applicant's predecessor and title had paid the rent. It is, therefore, prayed that relief prayed for in the Judge's Summons may be granted to the applicant.

10. Mr. Vakharia has, therefore, submitted that since the applicant is the owner of the property in question and the said property is in possession of the applicant, the Official Liquidator has no right, title or interest to proceed with the sale of the property in question and this Court has rightly prevented him from accepting the offer of any one pursuant to the advertisement issued by him. He has further submitted that there was no question of taking possession by the Official Liquidator as the property was transferred to the applicant much before the Company Petition No. 842 of 1986 was filed before this Court. He has, therefore, submitted that the present application may be allowed.

11. Mr. R.M. Desai, learned advocate appearing for the Official Liquidator has submitted that the Official Liquidator has taken the possession pursuant to the order passed by this Court and thereafter, the compliance report was filed before this Court. This Court has directed the Official Liquidator vide order dated 03.03.1999 in Company Application No. 283 of 1998 to constitute Sale Committee to get the inventory-cum-Valuation report of the assets of the Company in liquidation and thereafter to give public advertisement inviting offers in sealed covers for purchasing the plant and machineries of the Company in liquidation and separate offers for land and buildings. Pursuant to this order, he has issued advertisement in Gujarat Samachar dated 24.06.1999. Mr. Desai has further submitted that till the advertisement is published in the Newspaper, the present applicant has never approached to the Official Liquidator nor established its right over the

property in question. He has, therefore, submitted that the impugned Agreement is nothing but an after-thought. By virtue of the present application, the applicant is seeking a Specific Performance of the Contract and even if suit was filed by the applicant, the same would have been barred by limitation as according to the applicant, the Agreement was of 01.07.1981 and within period of three years, the suit was required to be filed for Specific Performance of the Contract. That period of three years has expired in 1984 and after five years, the applicant has moved the present application before this Court. He has, therefore, submitted that on the ground of limitation alone, the application deserves to be rejected. Even on merits, there is no substance and the applicant can never be held to be an owner of the property in question. He has, therefore, submitted that the applicant may be rejected with cost.

12. Mr. A.K. Clerk, learned advocate appeared for

respondent No. 2 Bank, namely, Gujarat Industrial Co-operative Bank Limited. An affidavit-in-reply is filed by the Bank on 16.10.2000. It was stated therein that the Bank had filed Lavad Suit No. 2966 of 1983 in the Court of Board of Nominees against M/s. Meccaas General Foods Pvt. Ltd and its Directors for Rs.17,64,666.48. The said Suit was allowed vide judgment and order dated 31.01.1992 and Board of Nominees directed the defendants to pay the amount claimed by the Bank with 17% running interest thereon. Two Directors of the Company preferred appeal No. 93 of 1992 against judgment and order dated 31.01.1992 passed by the Board of Nominees in Lavad Suit No. 2966 of 1983. The said appeal was allowed on the ground that the Bank had not been able to prove that the said Two Directors were the members of the Bank on the date of the transaction. The judgment and order passed by the Board of Nominees was confirmed against the remaining defendants in the Lavad Suit. The Bank has preferred Special

Civil Application No. 2380 of 1993 challenging the judgment and order dated 15.02.1993 of Gujarat State Co-op. Tribunal in Appeal No. 93 of 1992 which is still pending. It is further stated that by Certificate of Registration of mortgage under Section 132 of the Companies Act, 1956 dated 28.06.1982, the Bank's mortgage/charge dated 12.06.1981 against M/s. Meccaas General Foods Pvt. Ltd has been registered by the Assistant Registrar of the Companies. The Bank has also denied the fact that the applicant is the owner of the property in question.

13. After having heard learned advocates appearing for the respective parties and after having perused their pleadings and documents on record, the Court is of the view that the application deserves to be rejected in law as well as on facts. The alleged Agreement of 01.07.1981 on which reliance is placed by the applicant is obviously an after-thought. The applicant has

never taken the possession of the property in question. The applicant has not approached the Official Liquidator establishing his right over the property. Even the applicant's claim that the applicant is the tenant of the Company is also not supported by any documentary evidence. If the applicant is claiming its ownership on the basis of the Agreement of 01.07.1981, the applicant should have filed a suit for Specific Performance in the year 1984 which has not been done and by way of the present application which is filed in 1999, it is obviously barred by limitation. The applicant, therefore, cannot claim any relief from this Court. Even on merits, the application deserves no relief. It is stated that the consideration was agreed to be paid. However, no such consideration was paid. The same was stated to have been paid in the form of setting off of the applicant's claim against the respondent Company towards commission and other dues. Except this barred averment in the application and the alleged

Agreement, there is nothing to this effect which would inspire the confidence of this Court to accept this proposition. In any case, the Official Liquidator has taken the possession of the property of the Company in liquidation and the same was put to sale. The applicant has no right to obstruct the said sale proceedings. Hence, Company Application No. 310 of 1999 is rejected. The Official Liquidator is directed to proceed with the sale of the assets of the Company in liquidation.

14. In view of the order passed by this Court in Company Application No. 310 of 1999, Company Application No. 275 of 2000 where offer to purchase the property of the Company is made, no longer survives as the Official Liquidator will have to invite the offers and put the property for sale by auction. It is open for the applicant to make fresh offer to purchase all the properties in question and whosoever may be the highest bidder will get the said property

subject to confirmation by this Court.

15. With the aforesaid directions and observations, both these applications are accordingly disposed of without any order as to costs.

[K.A. PUJ, J.]

Savariya